

of all the Groups together would not be a serious burden on the Examiner. For example, publications which disclose nucleic acids normally also disclose the amino acids encoded by the nucleic acids, thereby making it a simple matter for the Examiner to search and examine polypeptides encoded by claimed nucleic acids. Furthermore publications which disclose host cells comprising polynucleotides often disclose methods to use the host cells, thereby making it a simple matter for the Examiner to search and examine groups I-V together. The M.P.E.P. § 803 (Seventh Edition, Rev. July, 1998) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. § 803, Applicants respectfully request that all claims be searched and examined in the subject application. Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

However, while not acquiescing to the Examiner's restriction requirement, Applicants note that the claims of Group IV, *i.e.*, claims 30, 40, 50, 62, 74, and 82, are related to the elected claims as between a product and a process for using the product, and further, that the process of claims 30, 40, 50, 62, 74, and 82 depend from and include all the limitations of the product of claims from which they depend, *i.e.*, claims 29, 39, 49, 61, 73, and 81, respectively. In light of the decisions in *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ 2d 1663 (Fed. Cir. 1996), a notice was published in the Official Gazette which set forth new

guidelines for the treatment of product and process claims. *See* 1184 OG 86 (March 26, 1996). Specifically, the notice states that

in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

*Id.* Accordingly, if claims 29, 39, 49, 61, 73, and 81 are found allowable, Applicants respectfully request that claims 30, 40, 50, 62, 74, and 82 be rejoined and examined for patentability.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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Date: July 26, 2001

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